UNITED STATES PATENT AND TRADEMARK OFFICE

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OFFICE OF PETITIONS

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In re Application of: :
Andrew M. K. Pennell et al.   :
Application No. 10/732,897   :   PETITION DECISION
Filed: December 9, 2003   :
Attorney Docket No.: 019934-003720US   :

This is a decision on the petition filed April 29, 2009 under 37 CFR 1.183 Requesting Waiver of Reexecution of Declaration which is being treated as a petition under 37 CFR 1.183 to waive the requirements of 37 CFR 1.64.

The petition is **dismissed**.

The application as-filed identified six inventors as the inventive entity: Andrew Pennell, James Aggen, J. Wright, Subhabrata Sen, Brian McMaster and Daniel Dairaghi. A petition to correct inventorship under 37 CFR 1.48(a) was filed April 28, 2008 but was dismissed by the examiner in a notice mailed May 20, 2008.

Petitioner has filed the instant petition and states that one of the originally listed inventors, Brian McMaster, is deceased and has no legal representative to sign in his place. Petitioners have filed a renewed request for corrected inventorship under 37 CFR 1.48. The instant petition under 37 CFR 1.183 requests waiver of the requirements of 37 CFR 1.64 since no signature for McMaster can be provided. No other evidence to support the assertion that inventor MeMaster is deceased has been provided.

In discussing waiver requirements under 37 CFR 1.183, the Office is guided by proof similar to that required when an Applicant is unavailable. In this instance, Applicant asserts that an inventor is deceased. 37 CFR 1.42 states: "Where the inventor dies during the time intervening between the filing of the application and the granting of a patent thereon, the letters patent may be issued to the legal representative upon proper intervention.

The MPEP 409.01(f), proves instructive. It states:

> When a joint inventor of a pro se application dies after filing the application, the living joint inventor(s) must submit proof that the other joint inventor is dead. Upon submission of such proof, only the signatures of the living joint inventors are required on the papers filed with the USPTO if the legal representative of the deceased inventor does not intervene. If the legal representative of the deceased inventor wishes to intervene, the

legal representative must submit an oath or declaration in compliance with 37 CFR 1.63 and 1.64 (e.g., stating that he or she is the legal representative of the deceased inventor and his or her residence, citizenship and post office address). Once the legal representative of the deceased inventor intervenes in the pro se application, the signatures of the living joint inventors and the legal representative are required on the papers filed with the USPTO.

This section explains that when joint inventors are attempting to file papers in an application where one of the joint inventors in the application has died, before the papers may be accepted, proof that the other inventor is dead is required. However, in the present petition, Applicant has not submitted any proof other than a statement in the petition, that the non-signing inventor is dead, above that which was previously submitted. Applicant must submit proof that the joint inventor is dead. Acceptable proof would consist of a copy of a Death Certificate.

For this reason, the petition under 37 CFR 1.183 is dismissed.

Further correspondence with respect to this matter should be addressed as follows:

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             Alexandria, VA 22313-1450

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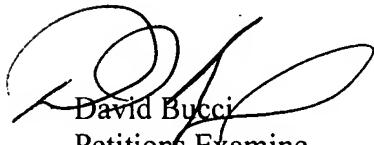
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